

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application of Qwest Corporation	)	
Pursuant to Section 271 of the	)	WC Docket No. 02-189
Telecommunications Act of 1996	)	
To Provide In-Region, InterLATA Services	)	
In Montana, Utah, Washington and Wyoming	)	

**REPLY COMMENTS**  
**OF THE**  
**MONTANA CONSUMER COUNSEL (“MCC”)**

**Background**

The Montana Consumer Counsel (MCC) submits the following comments regarding Qwest Corporation’s (Qwest) Application to provide in-region InterLATA services in Montana pursuant to Section 271 of the Telecommunications Act of 1996.

MCC is a constitutionally created state agency charged with representing consumer interests in proceedings that affect rates and services to utility consumers. *Art. XIII, sec. 2, Mont. Const., §§69-2-201, et seq., MCA.* MCC is an active participant in state regulatory proceedings involving Qwest’s services and rates, and has an interest in the telecommunications market environment in Montana.

## **Introduction**

With one exception, MCC agrees with the “Evaluation of the Montana Public Service Commission” (August 1, 2002). Qwest has met all of the requirements necessary for entry into the in-region interLATA market, and should be allowed such entry consistent with the conditions described in the Evaluation.

MCC, however, disagrees with the following aspect of the Montana Public Service Commission’s (MPSC) Evaluation. The MPSC states that it found a price squeeze exists in Montana “based upon evidence presented by parties in the 271 proceedings.” *MPSC Evaluation*, p. 2. The alleged price squeeze is premised on intrastate access charge rates that were previously approved by the MPSC. The Evaluation urges that approval of Qwest’s Application be conditioned on Qwest’s filing of a state rate application to mitigate the price squeeze. The Federal Communications Commission (FCC) should not adopt this condition for the reasons set forth below.

### **The FCC Should Not Condition Approval of Qwest’s Application on State Rate Levels Within State Commission Jurisdiction**

As a general matter, the FCC’s approval of Qwest’s Application should not be conditioned on resolution of state rate matters that are within the jurisdiction of the state commission. The MPSC has the authority to set and modify intrastate rates. It must do so subject to requirements of Montana state law, including certain procedural requirements of the Montana Administrative Procedures Act. The FCC should not be put in the position of effectively predetermining the outcome of such a state rate proceeding

(i.e., the reduction of intraLATA access rates) by making such action a condition to providing in-region interLATA service. Indeed, if the level of intraLATA access charges is of sufficient concern to condition approval of Qwest's Application, the FCC would have to be similarly concerned with the results of the contemplated state rate proceeding. There is no need here for the potential State/Federal conflict that might result.

### **There is No IntraLATA Price Squeeze That Requires Conditional Approval of Qwest's Application**

Assuming that the Commission decides to involve itself in this issue, it will find that the MPSC's Evaluation does not establish the existence of a price squeeze. In fact, the Preliminary Report acknowledges that the multistate Facilitator found insufficient evidence to support AT&T's claims.<sup>1</sup> The MPSC Reports place significance on an access charge cost surrogate provided by AT&T in a public interest workshop that was not intended to determine costs. No cost studies were performed and it is likely that these cost calculations would be contested in an appropriate proceeding.

To reach the specific conclusion of a price squeeze, the MPSC Reports rely exclusively on a simple comparison of Qwest's access rate to the lowest of Qwest's message toll charges that range from \$.07 to \$.22. While the comparison may be somewhat interesting, it falls short of establishing a basis for the MPSC's conclusion. In fact, these rates were approved by the MPSC. The lowest rate, which now forms the basis for the MPSC's concerns, is actually lower than the rate originally requested by Qwest and recommended by MCC.

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<sup>1</sup> Preliminary Report on Qwest's Compliance with the Public Interest Standard, p.10, fn.14.

By way of background, the MPSC does require imputation of access charges in setting rates. Since 1992, the MPSC has found “economic merit to impute Carrier Access Charges (CAC’s) into USWC’s toll service prices.” *MPSC Order No. 5535g, Docket No. 90.12.86 (1992)*. Moreover, the MPSC specifically concluded that imputation should occur on a “service-by-service basis,” and not by specific rate elements such as “time-of-day, day-of-the-week, individual mileage bands, or individual usage blocks.” *Order No. 5535g, ¶ 232*. It must be presumed that the current MPSC ordered rates did take into account recovery of access charges for MTS service as a whole. Indeed, since these intraLATA MTS rates range up to \$.22, or nearly triple the access charge rate, there is no reason to believe that access charges are not covered or that competitive providers could not compete for intraLATA MTS service.

Interestingly, a primary focus of the MPSC proceeding that set the current MTS rates was actually to reduce the amount of total revenues attributed to Qwest’s MTS service. This prior MPSC focus and action seems consistent with the Facilitator’s conclusion that “a proper inquiry must look at the use of access charge revenues.” *Preliminary Report, p.9*. There is simply no evidence that shows that Qwest has engaged in an intrastate access charge price squeeze with respect to its MTS service. Even the MPSC speaks in its Preliminary Report in terms of “mitigating the *allegation*.” *Preliminary Report, p.13. (Emphasis added.)* Commissioner Bob Rowe correctly stated in his “Separate Statement” (attached to the MPSC Evaluation):

“The Montana Commission’s position is based primarily upon an *alleged* price squeeze in the intraLATA long distance market” Evaluation, p. 61. (Emphasis added)

There, in fact, can be no price squeeze in toll rates in Montana. Qwest's toll rates in Montana are required by Montana law and the MPSC's rules to be above the cost of access charges plus toll costs.<sup>2</sup> This is the standard imputation test. Prior to filings made in the 271 workshops, MCC is not aware that there has never been a case filed by AT&T or any other toll carrier alleging an access charge price squeeze in Montana. As noted above, the Commission's consultant, Mr. Antonuk, rejected AT&T's arguments on price squeeze as lacking evidence. *Draft PIR, May 9, p. 15 and 18.* Finally, this Commission's Section 272 rules require Qwest to have a separate affiliate to enter the in-region interLATA toll business. The MPSC correctly finds that Qwest passes the Section 272 test. The toll affiliate will pay the same access charge rates as any other toll carrier. Therefore, there can be no price squeeze caused by Qwest LEC intrastate access charges.

## **Conclusion**

MCC believes that Qwest has met the necessary requirements to provide in-region interLATA services. The MPSC deserves a great deal of credit and should be recognized for its efforts and leadership in achieving this result. The MPSC Evaluation provides a thorough and helpful explanation of Qwest's compliance with entry requirements. MCC agrees with the Evaluation with the one exception noted herein. However, MPSC's public interest conclusions regarding the need to address AT&T's alleged price squeeze are unfounded and should not form the basis for FCC action in this proceeding. The Commission does not have any evidence before it that decreasing Montana intrastate access rates and placing further upward pressure on local exchange rates is necessary to

facilitate competition, or that such action is in the public interest. Likewise, the Commission has no evidence before it that any intrastate access charge price squeeze exists. MCC agrees with Commissioner Bob Rowe's conclusion that forcing an intrastate rate rebalancing as a condition for Qwest's entry into the in-region intraLATA toll market "is a well intentioned bad idea." *Evaluation, p.62*. With this one exception, the Commission should approve Qwest's Application as recommended in the Evaluation of the Montana Public Service Commission.

Respectfully submitted this 26<sup>th</sup> day of August 2002.

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<sup>2</sup> §69-3-811, MCA; MPSC Order No. 5535g, Docket No. 90.12.86 (1992).